

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

MELISSA TROSTLE,

Plaintiff,

v.

THE STATE OF NEW YORK,
THERESA KNAPP-DAVID, and DOUG
BOTSFORD,

Defendants.

COMPLAINT

Civil Action Number 1:13-CV-0709
(GTS/RFT)

JURY TRIAL DEMANDED

Plaintiff, by and through her counsel, complaining of the above-named defendants,
hereby alleges as follows:

JURISDICTION

1. This Court has jurisdiction over this matter under the provisions of 42 U.S.C. §§ 1331, 1341, & 1343 because it is filed to obtain a) compensatory and punitive damages for the deprivation, under color of state law, of the rights of citizens of the United States secured by the Constitution and federal law pursuant to 42 U.S.C. § 1983, and b) compensatory damages, counsel fees, equitable relief including front pay, backpay and reinstatement and all other appropriate relief for violations of the Family Medical Leave Act of 1993 (“FMLA”), 29 U.S.C, §§ 2601 *et seq.*

2. This Court also has jurisdiction over this matter under the provisions of 42 U.S.C. § 2000e-5(f)(3) (“Title VII”) because it is filed to obtain compensatory and punitive damages for discrimination on the basis of race/color/national origin, in violation of federal civil rights laws. Plaintiff Melissa Trostle filed a timely charge of discrimination complaining of the unlawful acts

alleged herein, and received a right to sue letter from the United States Equal Employment Opportunity Commission on or about April 10, 2013. A copy of Ms. Trostle's right to sue letter is attached hereto as Exhibit A.

3. This Court also has jurisdiction over Ms. Trostle's claims under the New York State Human Rights Law (N.Y. Exec. Law § 297, *et. seq.*) pursuant to its supplemental jurisdiction, 28 U.S.C. § 1367. On or about October 16, 2012, the New York State Division of Human Rights issued Ms. Trostle a determination of probable cause regarding her complaints of discrimination against the New York State Department of Corrections and Community Supervision. A copy of this determination of probable cause is attached herein as Exhibit B. Ms. Trostle was later provided with an order of dismissal for administrative convenience to pursue her claims in this litigation. A copy of the order of dismissal is attached hereto as Exhibit C.

4. Venue is proper under 28 U.S.C. § 1391 (e)(2) because the events giving rise to Plaintiff's claim occurred in this judicial district.

PARTIES

5. Plaintiff Melissa Trostle is a citizen of the United States and currently resides in Greene County, New York. Ms. Trostle is Hispanic.

6. Defendant State of New York is the state governmental body headquartered in Albany, New York. Claims against the State of New York are asserted relative to the actions of their agents in the New York State Department of Corrections and Community Supervision.

7. Defendant Theresa Knapp-David is an Associate Commissioner of the New York State Department of Corrections and Community Supervision, with her principal place of business being Building 2, 1220 Washington Avenue, Albany, NY. Ms. Knapp-David is Caucasian.

8. Defendant Doug Botsford is a Director of Classification and Movement at the New York State Department of Corrections and Community Supervision, with his principal place of business being Building 2, 1220 Washington Avenue, Albany, NY.

FACTS

9. In or around 1998, Ms. Trostle began working for the New York State Department of Corrections and Community Supervision (“DOCCS”) as a Corrections Counselor at the Greene Correction Facility in Cossack, NY. Based on her exemplary work, Ms. Trostle was promoted to Classification Analyst in or around 2004. In or around 2007, Ms. Trostle was again promoted to the position of Assistant Director of Classification and Movement (“Assistant Director”).

10. Due to this promotion to the Assistant Director position, Ms. Trostle was transferred to the DOCCS central office located in Albany, NY (the “Albany Office”) where she was supervised by Defendant Botsford and Defendant Knapp-David.

11. While employed at the Albany Office, Plaintiff was subject to ethnic discrimination by Defendant Knapp-David. Ms. Knapp-David frequently made derogatory comments about Hispanic employees and would remark that Hispanic employees should have stayed in Puerto Rico.

12. On multiple occasions, Plaintiff heard Ms. Knapp-David complain about employees who took legitimate sick leave, and would instruct Ms. Trostle to discuss with the Personnel Office about what action could be taken against such employees.

13. In or around February 2011, Ms. Trostle complained internally to Defendant Botsford regarding Defendant Knapp-David’s conduct.

14. Immediately after her complaint, Ms. Knapp-David and Mr. Botsford's treatment toward Plaintiff worsened. Specifically, Ms. Knapp-David and Mr. Botsford a) excluded Plaintiff from meetings, b) re-assigned Plaintiff's supervisory responsibilities to her subordinates, c) assigned her menial tasks which were not part of her job description, d) assigned her tasks of a Spanish-Speaking Classification Analyst, a position inferior to her Assistant Director position, and e) isolated Plaintiff from co-workers.

15. In or around late March 2011, Ms. Trostle went to the emergency room for intense abdominal pain and was informed that she needed immediate surgery to remove kidney stones. Plaintiff immediately informed Defendant Botsford that she required surgery. Ms. Trostle missed approximately 10 days of work and completed all required FMLA paperwork upon her return to work.

16. Following her return to work, Ms. Trostle learned from several co-workers that Ms. Knapp-David and Mr. Botsford had appointed her subordinate as "Acting" Assistant Director. Ms. Knapp-David and Mr. Botsford continued to exclude Plaintiff from meetings, undermined her authority with subordinates, denied her requests to attend trainings and refused to respond to Plaintiff's e-mails.

17. In late May 2011, Plaintiff again went to the emergency room for severe abdominal pain and was informed that she required a second immediate surgery. Once again, Plaintiff immediately informed Defendant Botsford that she needed surgery. Mr. Botsford instructed Plaintiff to coordinate her FMLA leave with the Personnel Office, which Plaintiff did.

18. Plaintiff returned to work on June 20, 2011. She was immediately met by Defendant Botsford and Defendant Knapp-David who informed her that she was being demoted to her original Corrections Counselor position, now called "Offender Rehabilitation Coordinator," at

the Greene Correction Facility due to excessive personal phone calls while at work and “issues with [Plaintiff’s] time.” Mr. Botsford and Ms. Knapp-David then instructed Ms. Trostle to collect her personal belongings and leave the premises.

19. Upon information and belief, and prior to her termination from her position of Assistant Director, Ms. Trostle’s complaints of discrimination resulted in a formal internal investigation of Ms. Knapp-David’s conduct toward Hispanic employees and Ms. Trostle in particular. This investigation was ongoing at the time of Ms. Trostle’s termination from the position of Assistant Director.

20. The Plaintiff’s requests for family medical leave were made in full compliance with all provisions of the Family Medical Leave Act.

21. Upon information and belief, Plaintiff was demoted for her two (2) FMLA absences described above and for complaining about Ms. Knapp-David’s treatment of, and comments about, Hispanic workers.

22. During her time at the Albany Office, neither Ms. Knapp-David nor Mr. Botsford ever disciplined or counseled, either formally or informally, Ms. Trostle about excessive personal phone calls or “issues with time.”

23. During all times mentioned in this Complaint, the individual Defendants were acting under color of law, that is, under color of the Constitution, statutes, laws, charter, ordinances, rules, regulations, customs and usages of the State of New York.

24. The individual Defendants should have known that their actions violated clearly established law protecting the Constitutional and statutory rights of the Plaintiff.

CAUSES OF ACTION

**AS AND FOR A FIRST CAUSE OF ACTION BY PLAINTIFF AGAINST ALL
DEFENDANTS**

Violation of the Family Medical Leave Act

-- Retaliation Against an Employee for Exercising Rights under the Act --

25. Plaintiff incorporates by reference and realleges each and every allegation stated in paragraphs 1 through 24.

26. The Family and Medical Leave Act of 1993 prohibits employers from retaliating against employees who exercise their rights to Family Medical Leave under the act.

27. Defendant State of New York is a state employer, and is thus liable for the Plaintiff's claims for equitable relief for FMLA violations.

28. Defendants Knapp-David and Botsford are supervisory personnel of a public agency, and are thus individually liable for FMLA violations.

29. The actions of Defendants detailed above violated Plaintiff's rights under 29 U.S.C. § 2601 *et seq.*, by demoting her in retaliation for exercising her right to FMLA leave. The hostile treatment directed at Plaintiff by Defendants Botsford and Knapp-David following Plaintiff's FMLA absences also constitute violations of the FMLA.

30. By reason of these violations, Defendants caused the Plaintiff to suffer damages including loss of income plus interest, loss of benefits, and other compensation denied by Defendants.

31. As a result of Defendants' violations, Plaintiff is entitled to reinstatement, backpay, frontpay, employment benefits and other compensation denied by Defendants' violations, interest, liquidated damages, and attorney's fees.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANT THE
STATE OF NEW YORK**

**Violation of Title VII of the Civil Rights Act
-- Retaliation --**

32. Plaintiff incorporates by reference and realleges each and every allegation stated in Paragraphs 1 through 31.

33. Title VII of the Civil Rights Act of 1964 precludes discrimination and harassment on the basis of ethnicity.

34. In violation of Title VII, Defendant State of New York retaliated against Plaintiff for internally complaining of ethnic discrimination perpetrated by Defendant Knapp-David.

35. In taking the above-described discriminatory actions, Defendant acted with malice and reckless indifference to Plaintiff's rights under Title VII.

36. Plaintiffs have suffered and continue to suffer mental anguish, emotional distress, humiliation and other compensable injuries as a result of the Defendant's actions.

**AS AND FOR A THIRD CAUSE OF ACTION AGAINST
DEFENDANT KNAPP-DAVID AND DEFENDANT BOTSFORD**

**Violation of Constitutional Rights Under Color of State Law
-- The Right to Freedom of Speech --**

37. Plaintiff incorporates by reference and realleges each and every allegation stated in Paragraphs 1 through 36.

38. The First Amendment to the United States Constitution protects citizens from being improperly punished by a governmental entity for complaining about ethnic discrimination, and for petitioning the government for the redress of grievances.

39. Retaliating against someone for complaining to a government agency about ethnic discrimination violates the First Amendment to the United States Constitution.

40. The actions of the above-named Defendants detailed above violate Plaintiff's rights under the United States Constitution, in that Defendants Knapp-David and Botsford retaliated against Plaintiff for her complaints of discrimination against Ms. Knapp-David by terminating the Plaintiff from her position as Assistant Director, and demoting her back to her original position.

41. This conduct on the part of the above-named Defendants also represents a violation of 42 U.S.C. § 1983, given that their actions were undertaken under color of state law.

42. As a direct and proximate result of the unconstitutional acts described above, Plaintiff has been irreparably injured.

AS AND FOR A FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS

-- Violation of State Law – New York Executive Law § 297

43. Plaintiff incorporates by reference and realleges each and every allegation stated in Paragraphs 1 through 42.

44. The New York State Human Rights Law (N.Y. Exec. Law § 297, *et. seq.*) prohibits discrimination in employment on the basis of ethnicity, and further prohibits efforts to retaliate against employees who complain about discrimination through the State of New York's established policies.

45. Defendants' actions toward Plaintiff, detailed above, violate Plaintiff's rights under the New York State Human Rights Law.

46. As a direct and proximate result of the illegal acts described above, Plaintiff has been irreparably injured.

DEMAND FOR PUNITIVE DAMAGES

47. The actions of Defendants described herein were extreme and outrageous, and shock the conscience of a reasonable person. Consequently, an award of punitive damages is appropriate to punish the Defendants for their cruel and uncivilized conduct. The Plaintiff does not seek an award of punitive damages against the State of New York.

DEMAND FOR TRIAL BY JURY

48. The Plaintiff hereby demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Melissa Trostle requests that this Honorable Court grant her the following relief:

A. A judgment in favor of Plaintiff against Defendant State of New York for compensatory damages and statutory damages in an amount to be determined by a properly charged jury relative to the Plaintiff's claims under Title VII and the New York State Human Rights Law, and in favor of the Plaintiff awarding the Plaintiff injunctive relief, including reinstatement to her position and back pay, pursuant to the provisions of the Family Medical Leave Act;

B. A judgment in favor of Plaintiff against Defendants Knapp-David and Botsford for compensatory damages and punitive damages in an amount to be determined by a properly charged jury;

C. A monetary award for attorney's fees and the costs of this action, pursuant to 42 U.S.C. § 1988 and 29 U.S.C. § 2617;

D. Any other relief that this Court finds to be just, proper and equitable.

Respectfully Submitted By:

/s Elmer Robert Keach, III

Dated: June 19, 2013

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Sarmili Saha, Esquire
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**ATTORNEYS FOR PLAINTIFF
MELISSA TROSTLE**

EXHIBIT A

Enclosures(s)

cc:

**NEW YORK STATE, DEPARTMENT OF
CORRECTIONS & COMMUNITY SUPERVISION
Attn: Herman Reinhold, Esq., Sr. Attorney
The Harriman State Campus, Building 2
1220 Washington Avenue
Albany, NY 12226-2050**

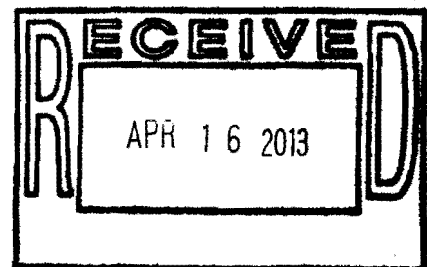


EXHIBIT B

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NICK TROSTLE

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recommendation for demotion.

Information in the record shows several permanent employees in supervisory positions demoted over the span of ten years with the majority of these employees identified as white. In the past two years there were a total of three employees demoted and of these three employees two were identified as Hispanic, and the other is identified as white with a Hispanic name. There was no other assistant director in a provisional position demoted under the supervision of Director Botsford or Associate Commissioner David for issues related to phone usage or time and attendance or any other performance issues during this period.

Investigation reveals that there are reasonable grounds for suspicion that discrimination occurred and the case should go forward to a formal hearing in front of an administrative law judge where sworn testimony can be taken and issues of fact be resolved.

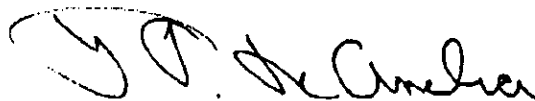
Reviewed & Approved:



Sandra M. Carlin
Human Rights Specialist II

IV. DETERMINATION

Based on the foregoing, I find PROBABLE CAUSE to support the allegations of the complaint.

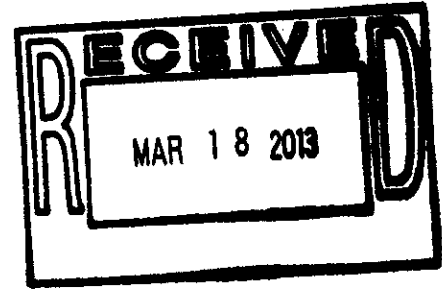


Victor P. DeAmelia
Regional Director

EXHIBIT C



ANDREW M. CUOMO
GOVERNOR



NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION
OF HUMAN RIGHTS
on the Complaint of

MELISSA TROSTLE,

Complainant,

v.

NEW YORK STATE, DEPARTMENT OF
CORRECTIONS AND COMMUNITY
SUPERVISION,

Respondent.

NOTICE AND
FINAL ORDER

Case No. 10154457

Federal Charge No. 16GB202560

PLEASE TAKE NOTICE that the attached is a true copy of the Recommended Order of Dismissal for Administrative Convenience ("Recommended Order"), issued on March 5, 2013, by Christine Marbach Kellett, an Administrative Law Judge of the New York State Division of Human Rights ("Division"). An opportunity was given to all parties to object to the Recommended Order, and all Objections received have been reviewed.

PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE GALEN D. KIRKLAND, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS ("ORDER"). In accordance with the Division's Rules of Practice, a copy of this Order has been filed in the offices maintained by the Division at One

Fordham Plaza, 4th Floor, Bronx, New York 10458. The Order may be inspected by any member of the public during the regular office hours of the Division.

PLEASE TAKE FURTHER NOTICE that any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice that is the subject of the Order occurred, or wherein any person required in the Order to cease and desist from an unlawful discriminatory practice, or to take other affirmative action, resides or transacts business, by filing with such Supreme Court of the State a Petition and Notice of Petition, within sixty (60) days after service of this Order. A copy of the Petition and Notice of Petition must also be served on all parties, including the General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Please do not file the original Notice or Petition with the Division.

ADOPTED, ISSUED, AND ORDERED.

DATED: 3/13/2013
Bronx, New York



GALEN D. KIRKLAND
COMMISSIONER

TO:

Complainant

Melissa Trostle
[REDACTED]

Complainant Attorney

Elmer Robert Keach, III, Esq.
1040 Riverfront Center, P.O. Box 70
Amsterdam, NY 12010

Respondent

New York State, Department of Corrections and Community Supervision
Attn: Deborah Nazon, Ph.d, Acting Director
Deborah Nazon, Ph.D., ODM, Bryan Bradt, Affirmative Action Administrator 2
The Harriman State Campus-Bldg. 2, 1220 Washington Ave.
Albany, NY 12226-2050

Respondent Attorney

Herman Reinhold, Esq., Sr. Attorney
New York State, Department of Corrections and Community Supervision
1220 Washington Avenue, Building 2
Albany, NY 12226-2050

Hon. Eric T. Schneiderman, Attorney General
Attn: Civil Rights Bureau
120 Broadway
New York, New York 10271

State Division of Human Rights

Robert Goldstein, Director of Prosecutions
Aaron Woskoff, Senior Attorney
Christine Marbach Kellett, Chief Administrative Law Judge
Sara Toll East, Chief, Litigation and Appeals
Caroline J. Downey, General Counsel
Melissa Franco, Deputy Commissioner for Enforcement
Peter G. Buchenholz, Adjudication Counsel
Matthew Menes, Adjudication Counsel



ANDREW M. CUOMO
GOVERNOR

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION OF
HUMAN RIGHTS**

on the Complaint of

MELISSA TROSTLE,

Complainant,

v.

**NEW YORK STATE, DEPARTMENT OF
CORRECTIONS AND COMMUNITY
SUPERVISION,**

Respondent.

**RECOMMENDED ORDER
OF DISMISSAL FOR
ADMINISTRATIVE
CONVENIENCE**

Case No. **10154457**

PROCEEDINGS IN THE CASE

On April 18, 2012, Complainant filed a verified complaint with the New York State Division of Human Rights ("Division"), charging Respondent with unlawful discriminatory practices relating to employment in violation of N.Y. Exec. Law, art. 15 ("Human Rights Law").

After investigation, the Division found that it had jurisdiction over the complaint and that probable cause existed to believe that Respondent had engaged in unlawful discriminatory practices. The Division thereupon referred the case to public hearing.

The case was assigned to Christine Marbach Kellett, an Administrative Law Judge ("ALJ") of the Division. Complainant was represented by Elmer Robert Keach, III, Esq.. Respondent was represented by Herman Reinhold, Esq., Sr. Attorney

On March 5, 2013 Complainant by her attorney requested an administrative convenience dismissal (ACD) in order to pursue her remedies in federal court. (ALJ Exh. 1)

The parties were given an opportunity to object to the ACD. (ALJ Exh. 2)

Respondent by its attorney indicated it had no objections to the ACD. (ALJ Exh. 3)

Pursuant to Section 297.3(c) of the Human Rights Law, the complaint should be dismissed on the grounds of administrative convenience. The Complainant intends to pursue federal remedies in court, in which forum all the issues concerning the question of discrimination charged can be resolved.

ORDERED, that the case be dismissed for administrative convenience.

Dated: March 5, 2013
Bronx, New York


Christine Marbach Kellett
Administrative Law Judge